IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(SPECIAL ORIGINAL JURISDICTION)

Thursday, the Fourteenth day of October, two thousand and four

Present:

THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No.902 OF 2001

Between:

Ksheera Sagar Chopra S/o Ch.Isaiah, aged about 62 years, Occ: Pensioner, R/o H.No.12-13-677/31, Kimthi Colony, Tarnaka, Hyderabad.

...Petitioner

And

1. Principal Secretary to Government of Andhra Pradesh, Animal Husbandry & Fisheries Department, Secretariat Buildings, Hyderasbad.

2. The Managing Director, Andhra Pradesh Dairy Development Co-operative Federation Limited, Lalapet, Secunderabad.

3. Accountant General, Andhra Pradesh, Saifabad, Hyderabad.

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate writ, order or direction, preferably a writ in the nature of mandamus declaring the G.Oms.No.81, Animal Husbandry, Dairy Development and Fisheries (Dy.II) Department, dated 13-11-2000 and the verification report of the Accountant General, A.P., Hyderabad issued in Ref.No.17/III/K-31/BF/19/1998/1412, dated 9-11-1998 in deciding the claim for capitalized pension and not paying the monthly pension and not passing pension payment order on prorata basis in terms of G.O.Ms.No.647, F & R Development Corporation Department dated 16-8-1977 as illegal, contrary to law and set aside the same and direct the respondents to release the monthly

pension by passing the pension payment order by following terms and conditions laid down in G.O.Ms.No.647, Forest and Rural Development Corporation Department, dated 16-8-1977, consequently suspect the operation of G.O.Ms.No.81, Animal Husbandry, Dairy Development and Fisheries (Dy.II) Department, dated 13-11-2000 and verification report of the Accountant General A.P., Hyderabad in Ref.No.17/III/K-31/BF/19/1998/1412, dated 9-11-1998.

For the Petitioner: Mr.Cheruku Srinivas, Advocate.

For the Respondent No.1: G.P., for Animal Husbandry

For the Respondent No.2: Mr.N.Rajeshwar Rao, SC for APDDC.

For the Respondent No.3: SC., for Central Government.

The Court made the following :

ORDER:

The petitioner questions the order of the Government in G.O.Ms.No.81, Animal Husbandry, Dairy Development and Fisheries (Dy.II) Department, dated 13-11-2000 in sanctioning the lumpsum amount of Rs.9,858/- towards prorata pension to the petitioner as illegal, arbitrary and contrary to the terms and conditions of the Government Orders in G.O.Ms.No.647, Forest and Rural Development (Corporations) Department, dated 16-8-1977 and the Andhra Pradesh (Revised) Pension Rules, 1980.

The petitioner was initially appointed temporarily in Government Service on 10-5-1961. He was permanently appointed in the Government Service on 18-10-1966 in the office of the Director of Higher Education. Later he was transferred from Education Department to the office of the Milk Commissioner (erstwhile Integrated Milk Project), Hyderabad. The Integrated Milk Project was a Government Department, which was renamed as Andhra Pradesh Dairy Development Corporation with effect from 2-4-1974. The petitioner worked as U.D.C., Office Superintendent, Assistant Welfare Officer, Welfare officer, Personal Officer and Industrial Relations officer in the second respondent Corporation and retired from service on 31-7-1995 on attaining the age of superannuation.

The case of the petitioner is that as per the orders of the Government in G.O.Ms.No.647, Forest and Rural Development (Corporations) Department, dated 16-8-1977, the services of the Government employees working in the Corporations were transferred permanently to the Andhra Pradesh Dairy Development Corporation, subject to certain terms and conditions. As per condition No.(v) of the said Government Order, the Government Servants when opted for transfer to the Andhra Pradesh Diary Development Corporation would get the benefit of counting the period of regular service put in under the Government towards total service; and for the service rendered under the Government, they will be eligible for pension or pensionary benefits. It was also clarified that temporary service under the Government was also to be counted for the purpose of total service for the purpose of pension.

The admitted facts are that the petitioner was temporarily appointed in the Government Department on 10-5-1961 and permanently appointed on 18-10-1966 and he worked in the Government Department from 10-5-1961 to 31-7-1977. If his temporary service is taken into account in the Government service, he worked in the Government Department for 16 years, two months, 21 days. If his permanent service alone is taken into account i.e., from 18-10-1966 to 31-7-1977, he worked in the Government Department for a period of 10 years, 9 months, 14 days. There is no dispute that as he has opted for the Corporation service conditions, all the amounts payable to the petitioner for the service rendered by him in the second respondent Corporation from 31-7-1977 to 31-7-1995, were settled and paid. There is no dispute that the petitioner is entitled to the pension for the service rendered by him in Government Department as he has worked for more than 10 years in the Government service..

For payment of pension to the petitioner, the General Manager of Andhra Pradesh Diary Development Co-operative Federation Limited, addressed letter No.1591/PC/96, dated 30-3-1998 to the Accountant General of Andhra Pradesh, stating that the petitioner was borne in Andhra Pradesh Government Service of Hospital for

Mental Disease as L.D.C. from 10-5-1961 and he is eligible for the pension from the Government sources for the services rendered by him from the date of his appointment in the Government service, till the date of his absorption in Andhra Pradesh Diary Development Co-operative Federation Limited as he was a State Government Servant up to 31-7-1977. Accordingly, pension papers were forwarded with Service Register for issuance of pension payment order.

The second respondent also addressed a letter No.1591/PC/96, dated 22-12-1998 to the Principal Secretary to the Government Animal Husbandry and Fisheries Department, stating that the retired erstwhile Government employees are entitled for pension, but not capitalized pension and accordingly, requested to sanction prorata pension to the petitioner and similarly situated other persons. As the pension payable to the petitioner was not paid, the petitioner filed a Writ Petition in W.P.No.25426 of 1999, in which, counters have been filed on behalf of the respondents, stating that recommendations have already been made for payment of prorata pension and the Accountant General had verified the pension claim of the petitioner and issued a formal pension verification report for further action and the same is under examination in the Finance Department since 15-10-1999. The Government also did not dispute the entitlement of the petitioner for grant of pension. Accordingly, the said Writ Petition was disposed of on 31-12-1999, directing the first respondent to take appropriate decision in the matter and finalize the issue relating to the prorata pension payable to the petitioner within a period of three months from the date of receipt of said order. As the said direction was not complied with, the petitioner filed Contempt Case No.1259 of 2000. After filing the Contempt Case, the Government issued orders in G.O.Ms.No.81, Animal Husbandry, Dairy Development and Fisheries (Dy.II) Department, dated 13-11-2000, pursuant to the letters addressed by the Managing Director of Andhra Pradesh Dairy Development Co-operative Federation Limited, sanctioning prorata pension amount of Rs.9,858/- as a lumpsum, but not the monthly pension. Therefore, it was contended in the Contempt Case that the

said order of the Government in G.O.Ms.No.81, dated 13-11-2000 is not only erroneous, but also totally arbitrary and it does not reflect the true and correct state of affairs. But, this Court was of the opinion that it is not possible for the Court in the Contempt Case to judicially review the said order, therefore, liberty was given to the petitioner to assail the said order. Accordingly, the petitioner filed the present Writ Petition, questioning the said order of the Government as illegal and contrary to the Revised Pension Rules and also terms and conditions of the Government orders in G.O.Ms.No.647, dated 16-8-1977.

Under Rule 45 of Andhra Pradesh (Revised) Pension Rules, 1980, “the Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than 10 years, the amount of pension shall be proportionate as set out in the said rules”. Admittedly, the petitioner worked more than 10 years in the Government service. Under Rule 13 of the said rules, “the qualifying service of a Government servant shall commence from the date he takes charge of the post to which he first appointed either substantatively or in an officiating or temporary capacity”. Therefore, it is the contention of the petitioner that he is entitled to count his qualifying service from 10-5-1961 to 31-7-1977.

Condition No.(v) to G.O.Ms.No.647, dated 16-8-1977, clarifies that temporary service under the Government was also to be counted for the purpose of total service rendered by the petitioner under the Government for the pension and pensionary benefits.

Under Rule 35 of Andhra Pradesh (Revised) Pension rules, 1980, “the Government servant who has been permitted to be absorbed in a Corporation is deemed to have been retired from service of the Government from the date of absorption and shall be eligible to receive retirement benefits which he may have elected or deemed to have been elected from such date as may be determined in accordance with the orders of the Government applicable to him, subject to Rule 45”. As already stated, the Government agreed in G.O.Ms.No.647, dated 16-8-1977, that the Government Servants

who have transferred to the second respondent corporation are entitled for pension.

Under Rule 36 of the Andhra Pradesh (Revised) Pension rules, 1980, “the Government servants who opted for permanent absorption in the Corporations (public enterprise) on or after 16th June, 1967 are entitled to the prorata pension for the service rendered by them in the Government Department for the period of their absorption in the Corporation/autonomous bodies, based on the length of their qualifying service under Government till the date of their absorption. The pension will be calculated on the basis of average emoluments for 10 months preceding the date of absorption”.

Under Rule 36(2) of the Andhra Pradesh (Revised) Pension rules, 1980, “the amount of pension should be currently worked out and should be intimated to the officer as well as to the undertaking as and when the officer is absorbed”.

Unfortunately, in the instant case, the amount of pension payable to the petitioner as on the date of absorption in the Second respondent Corporation was not at all informed by the first respondent. There is no dispute that the petitioner is entitled for prorata pension.

The perusal of the impugned order of the Government issued in G.O.Ms.No.81, dated 13-11-2000 do not disclose as to what was the basis for grant of lumpsum amount of Rs.9,858/- as prorata pension that was sanctioned and paid to the petitioner. There is also no basis for releasing the capitalized value of the pension to the petitioner. It is the specific case of the petitioner that he is entitled for payment of pension as per Rules 35 and 36 read with 45(2) and 13 of the Andhra Pradesh (Revised) Pension rules, 1980. But the Government issued the said order erroneously and contrary to the Andhra Pradesh (Revised) Pension rules, 1980 and also the terms and conditions laid down in G.O.Ms.No.647, dated 16-8-1977.

For the aforesaid reasons, I am of the opinion that the petitioner is

entitled for monthly pension. Even if no option is submitted by the petitioner, it is the duty of the employer to obtain the same from the petitioner and accordingly, in the instant case, the second respondent rightly recommended the case of the petitioner by sending proposals for release of prorata monthly pension, but the Government without any basis and without giving any opportunity to the petitioner, unilaterally passed the said erroneous order. I am of the opinion that the said order of the Government in not sanctioning the prorata pension for the service rendered by the petitioner in the Government from 10-5-1961 to 31-7-1977 is illegal and contrary to the Andhra Pradesh (Revised) Pension rules, 1980 and the orders of the Government in G.O.Ms.No.647, dated 16-8-1977.

Accordingly, the Writ Petition is allowed and the impugned Government Order in G.O.Ms.No.81, Animal Husbandry, Dairy Development and Fisheries (Dy.II) Department, dated 13-11-2000 and the verification report of the Accountant General, Andhra Pradesh, Hyderabad in reference No.17/III/K-31/BF/19/1998/1412, dated 9-11-1998 are set aside and the respondents are directed to pass orders afresh keeping in view of the total qualifying service of the petitioner in the Government from the date of his initial temporary appointment till the date of his absorption in the second respondent Co-operative Federation Limited in accordance with the Andhra Pradesh (Revised) Pension rules, 1980 and as per the terms and conditions of G.O.Ms.No.647, Forests and Rural Development (Corporations) Department, dated 16-8-1977 and pass appropriate orders within (8) eight weeks from the date of receipt of copy of this order. No order as to costs.

_____

V.ESWARAIAH, J

Date: 14-10-2004.

Shr.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on the Thursday the Fourteenth day of October, two thousand and four.

Asst.Registrar.

Copies to:-

1. The Principal Secretary to Government of Andhra Pradesh, Animal Husbandry & Fisheries Department, Secretariat Buildings, Hyderasbad.

2. The Managing Director, Andhra Pradesh Dairy Development Co-operative Federation Limited, Lalapet, Secunderabad.

3. The Accountant General, Andhra Pradesh, Saifabad, Hyderabad.

4. Two CCs to the G.P., for Animal Husbandry, High Court Buildings, Hyderabad (OUT).

5. Two CD. Copies.